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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,695	08/03/2001	Pierre Olry	BDL-356XX	6216

207 7590 07/22/2003

WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP  
TEN POST OFFICE SQUARE  
BOSTON, MA 02109

EXAMINER

LISH, PETER J

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 07/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/890,695

Applicant(s)

OLRY ET AL.

Examin r

Peter J Lish

Art Unit

1754

-- Th MAILING DATE of this communication app ars on th cover sh t with the correspond nce address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 15 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### *Claim Rejections - 35 USC § 103*

Claims 1-6, 9-13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishino et al. (US 4,409,125) taken with Abbott (US 3,053,775) and further in view of Simpson (US 4,274,979).

Nishino teaches a method for the continuous carbonization and activation of cellulosic fibers, specifically vegetable fibers, whereby the fibers are carbonized under an inert gas, such as nitrogen, for between about 0.25-2 hours at temperatures up to 750 °C and preferably up to 650 °C (column 2, lines 60-65). The heating up rate is about 5 °C/min to 75 °C/min and preferably about 10 °C/min to 45 °C/min (column 2, line 65 to column 3, line 9). It would have been obvious to one of ordinary skill at the time of invention to use a heating rate of 10 °C/min, as it is within the range taught by Nishino et al. and the selection of a desired temperature within a known range is viewed to be the optimization of a known process, which could have been determined through routine experimentation, and is held to be obvious by *In re Boesch*, 205 USPQ 215.

Nishino does not teach that the process occurs by continuously traveling the fiber through stages of a carbonization chamber. Abbott teaches a process for the carbonization of cellulosic fibers whereby continuously traveling the fiber through successive stages of a carbonization chamber is preferred to a batch-wise process. It would have been obvious to one of ordinary skill at the time of invention to perform the carbonization process of Nishino in a continuous fashion, as taught by Abbott, in order to more efficiently produce a higher amount of carbonized fiber product.

Nishino does not explicitly teach that the cellulosic fiber is a cellulosic fiber fabric. Simpson teaches a process for the carbonization of cellulosic fibrous material wherein the fibrous material may be in the form of a single filament or as a staple fiber, but is preferably a cellulosic cloth. Thus it would be obvious to use a cellulosic cloth in the treatment of Nishino et al., as it is taught by Simpson to be equivalent to a cellulose fiber in that they are identically treated.

Regarding claims 4-6 and 11-13, Simon teaches that the treated cellulose material may be dried at a temperature in the range of from room temperature to 140 °C or more on a heated air bed (column 2, lines 58-61 and column 9, lines 23-25) after Lewis acid treatment yet prior to carbonization. While Simon does not specify the drying time, it is expected that it will be equivalent to that claimed by the applicant, as the same effect is desired and the temperature is variable within the an equivalent range. It would have been obvious to one of ordinary skill at the time of invention to use the drying step of Simpson in the process of Nishino in order to remove any excess Lewis acid that may result from the treatment.

Claims 7-8, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishino et al. taken with Abbott and in view of Simpson, as applied to claims 1-6, and 9-13 above, and further in view of Perkins (GB 1,136,349).

Art Unit: 1754

Nishino does not teach the graphitization of the carbonized fibers. Perkins teaches that carbon fibers, produced from a similar treatment of cellulose material, may be graphitized by quickly heating from 800 °C up to 2800 °C in a 10 minute time period (Table 1). It would have been obvious to one of ordinary skill at the time of invention to perform the graphitization treatment of Perkins on the carbon fiber produced by Nishino et al. and Simpson, in order to produce a graphite product.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Lish whose telephone number is 703-308-1772. The examiner can normally be reached on 9:00-6:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 703-308-3837. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-305-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



PL  
July 18, 2003

**STUART L. HENDRICKSON**  
**PRIMARY EXAMINER**